WPMS No. 1081 of 2003
Hon'ble Irshad Hussain, J.

Heard. This is a petition under Section 227 of the Constitution of India against the impugned judgment and order dated 9.10.2003 passed by the learned District Judge, Haridwar, thereby dismissing the miscellaneous appeal preferred by the petitioner.

Heard Sri Pankaj Miglani, Sri I. S. Mehra learned Standing Counsel and Ms Minakshi Pandey learned Standing Counsel for U.P. State and perused the record.

From perusal of the impugned order, it is evident that the learned District Judge proceeded with the assumption that the amendment application preferred by the petitioner on 8.8.202 was pending disposal. Learned District Judge failed to notice that the caption of the misc. appeal itself indicate that the same was preferred against the order dated 4.9.2002 by which the application for leave to amend written statement was rejected. Considering this, the learned District Judge made jurisdictional error in dismissing the said appeal without considering the merit and that to by burdening the petitioner with heavy cost of Rs. 2,000/-. The approach appear to be injudicious and there are reasons to set aside the impugned judgment.

For the above reasons, the impugned judgment and order dated 9.10.2003 is set aside.

Under the supervisory jurisdiction and to void further delay the merit of the amendment application dated 8.8.2002 has also been considered. The amendment sought are necessary for just decision of the matter and therefore it will be in the fitness of the things if this application copy of which is annexure-5 to the petition is allowed. The application for amendment is allowed. The amendment shall be incorporated by the petitioner in the written statement on the record of the lower court and thereafter the respondent will be afforded opportunity to file the replication, if any.

The petition is disposed of in these terms.

(Irshad Hussain, J.)

Dated 24.10.2003
Rawat